IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1979

No. 79-1502

KERN COUNTY WATER AGENCY, et al.

Petitioners,

vs.

SIERRA CLUB, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM OF RESPONDENTS SUPPORTING CERTIORARI

PETTIT & MARTIN
JOHN B. CLARK
JAMES E. HARRINGTON
ROBERT B. THUM
600 Montgomery Street
San Francisco, CA 94111
Telephone: (415) 434-4000

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Respondents Sierra Club, Hank Schramm and William Dixon hereby inform the court that they support the granting of a writ of certiorari in this case. While respondents do not adopt or acknowledge the

validity of the statements and arguments set forth in the Petition, they agree with petitioners' conclusion that the Court should grant the writ in order to decide on the merits (1) whether the permit requirements of section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) are applicable to the type of state water project that is the subject of the petition, and (2) whether respondents and other private parties have a right to enforce the provisions of the Act by a civil action in a federal court. In respondents' view, it is necessary for this Court to resolve the first of these issues in order to dispel the erroneous notion - clearly manifested in the petition in this case and in the petition and brief of amici curiae in the companion case (State of California v. Sierra Club, No. 79-1252) and apparently espoused by the chief legal officers of sixteen western states - that this Court's decision in California v. United States, 438 U.S. 645 (1978), has conferred upon state water agencies a blanket exemption from the requirements of federal law relating to navigation and the environment. Similarly, the second of these issues ought to be resolved on

the merits by this Court because the plain intent of Congress to permit private enforcement of the Rivers and Harbors Act, accurately discerned by the Court below, has recently been disputed by other lower federal courts and hence may ultimately be frustrated unless it is reaffirmed by this Court. See City of Evansville v. Kentucky Liquid Recycling, Inc., 604 F.2d 1008 (7th Cir. 1979); Barcelo v. Brown, 478 F.Supp. 646 (D.P.R. 1979); Citizens Committee for Environmental Protection v. United States Coast Guard, 456 F.Supp. 101 (D.N.J. 1978).

For these reasons, respondents concur in the view that this case should be heard on the merits and they therefore join with petitioners in urging the Court to grant the writ.

Dated: April 8, 1980.

Respectfully submitted,

PETTIT & MARTIN
JOHN B CLARK
JAMES E. HARRINGTON
ROBERT B. THUM